BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DANNY LEE DREILING Claimant	}
VS. AIR CAPITOL, INC.) Docket No. 201,847
Respondent AND	}
KANSAS MANUFACTURERS & COMMERCE SELF INSURERS FUND Insurance Carrier	

<u>ORDER</u>

Respondent requests review of the Preliminary Hearing Order entered in this proceeding by Administrative Law Judge Shannon S. Krysl on July 11, 1995.

ISSUES

The Administrative Law Judge granted claimant's request for benefits. The respondent requests review of that finding and raises the issue whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent. That is the sole issue now before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

For purposes of preliminary hearing, the Appeals Board finds as follows:

- (1) The Appeals Board has jurisdiction to review this Preliminary Hearing Order pursuant to K.S.A. 44-534a.
- (2) The Appeals Board finds the Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

In this case, the question whether claimant was injured while working for the respondent hinges on the credibility of the witnesses who testified before the Administrative Law Judge. The Judge found claimant more probably than not aggravated his back while working for the respondent in May 1995 and the Appeals Board adopts that finding as its

own. This conclusion is supported both by claimant's testimony and the medical evidence introduced at hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl entered in this proceeding on July 11, 1995, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.
Dated this day of September 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER
Dale V. Slane, Wichita, KS

c: Dale V. Slape, Wichita, KS Stephen A. McManus, Kansas City, KS Shannon S. Krysl, Administrative Law Judge Philip S. Harness, Director